

CRIMINAL CODE AMENDMENT ACT 1987

No. 83 of 1987

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CRIMINAL CODE AMENDMENT ACT 1987

No. 83 of 1987

AN ACT to amend the Criminal Code Act 1924 and the Criminal Code.

[Royal Assent 22 December 1987]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Criminal Code Amendment Act 1987*. Short title.

2—(1) Except as provided in subsection (2), this Act shall commence on the day on which it receives the Royal assent. Commencement.

(2) Sections 4 and 6 shall commence on such day as may be fixed by proclamation.

3—In this Act, the *Criminal Code Act 1924* is referred to as the Principal Act and the *Criminal Code** is referred to as the Code. Principal Act, &c.

* Schedule 1 to 14 Geo. V No. 69. For the *Criminal Code Act 1924* and the *Criminal Code*, as amended to 1st March 1980, see the continuing Reprint of Statutes. Subsequently amended by No. 19 of 1980, No. 52 of 1981, Nos. 33 and 99 of 1982, No. 77 of 1983, No. 3 of 1984, No. 17 of 1985, Nos. 77, 86, and 93 of 1986, and Nos. 26, 71, and 81 of 1987.

Amendment of section 12 of Principal Act (Rules of Court).

4—Section 12 (1) of the Principal Act is amended by inserting “on questions reserved for the consideration and determination of that Court, or referred to that Court, pursuant to Chapter XLII of the Code,” after “Appeal,”.

Amendment of section 338 of Code (Stealing, false pretences, cheating, dishonestly obtaining financial advantage, and receiving).

5—Section 338 (1) of the Code is amended as follows:—
 (a) by omitting “or” at the end of paragraph (c);
 (b) by inserting the following paragraph after that paragraph:—
 (ca) dishonestly obtaining a financial advantage;
 or

Insertion of new section 388AA in Code.

6—After section 388 of the Code, the following section is inserted in Chapter XLII:—

Power of Attorney-General to refer questions of law to Court of Criminal Appeal.

388AA—(1) Subject to subsection (5), where a person has been acquitted after his trial on indictment, the Attorney-General may, within 28 days after the conclusion of the trial, refer any question of law that has arisen at the trial to the Court of Criminal Appeal for determination by that Court.

(2) The Attorney-General shall cause notice of a reference by him under subsection (1) to be given to the acquitted person to whom the reference relates.

(3) The reference of a question under this section or the determination by the Court of Criminal Appeal of a question referred to it under this section shall not in any way affect the trial at which the question arose or affect or invalidate any verdict or decision given at that trial.

(4) The procedure in relation to the determination of a question referred under this section to the Court of Criminal Appeal shall, subject to any rules made pursuant to section 12 of this Act, be as determined by the Court.

(5) The time within which a question may be referred under this section to the Court of Criminal Appeal may be extended at any time by the Court.

(6) Where a question is referred under this section to the Court of Criminal Appeal—

(a) a person charged at the trial at which the question arose or affected by the verdict or the decision given at that trial is entitled to be heard before the Court of Criminal Appeal on the determination of that question;

- (b) if it appears that that person does not intend to appear on his own behalf, and does not propose to be represented on the determination of that question, the Attorney-General may arrange for a legal practitioner to argue that question before the Court of Criminal Appeal on behalf of that person; and
- (c) there shall be paid by the Crown the costs of the legal representation of any person heard before the Court of Criminal Appeal as provided in this subsection, being such costs as that Court, subject to subsection (7), considers to be reasonable.

(7) For the purpose of determining the amount of any costs of any legal representation that it should order to be paid pursuant to subsection (6) (c), the Court of Criminal Appeal may obtain the assistance of the Registrar of that Court who may require the person providing the legal representation to lodge a bill of costs for the consideration of the Court.

(8) Where the Court of Criminal Appeal makes an order with respect to the payment of any costs referred to in subsection (6) (c), that Court shall deliver or cause to be delivered a copy of the order to the Secretary of the Law Department and thereupon the amount in respect of which the order is made may be recovered as a debt due by the Crown.

7—Section 401 of the Code is amended as follows:—

- (a) by omitting “alone” from subsection (1) (a);
- (b) by omitting “alone” from subsection (2) (b);
- (c) by adding the following subsection after subsection (2):—

(3) For the purposes of subsection (2) (c), “sentence”, in relation to—

(a) a person convicted on indictment, includes—

- (i) an order that the person be discharged upon his entering into a recognizance under section 386 (1) (c); and
- (ii) a probation order under section 7 (2) of the *Probation of Offenders Act 1973*; or

Amendment of section 401 of Code (Right of appeal).

(b) a person convicted under the provisions of section 63 of the *Justices Act 1959*, includes a probation order under section 7 (2) of the *Probation of Offenders Act 1973*.

Amendment of section 402 of Code (Determination of appeals).

8—Section 402 (5) of the Code is amended by omitting “issued” and substituting “issue”.

Non-application to certain indictments of section 338 (1) of Code, as amended by this Act.

9—Section 338 (1) of the Code, as amended by this Act, does not apply to an indictment for the crime of dishonestly obtaining a financial advantage committed before the day on which this Act receives the Royal assent.